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County Counsel

June 29, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**RULES FOR ADMINISTRATION OF POSTGOVERNMENT ORDINANCE
(ALL DISTRICTS - 3 VOTES)**

JOINT RECOMMENDATION WITH EXECUTIVE OFFICER THAT YOUR BOARD:

Approve the attached Rules for Administration of Chapter 2.175 of the Los Angeles County Code Pertaining to the Postgovernment Employment and Lobbying Activities of County Officials ("Rules"), to be effective as of the date of adoption.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On March 7, 2006, your Board adopted Chapter 2.175 of the Los Angeles County Code, Postgovernment Employment and Lobbying Activities of County Officials ("Postgovernment Ordinance" or "Ordinance").

The Postgovernment Ordinance prohibits the negotiation of any agreement for future employment or promise of income between specified County officials and those persons or entities with County matters pending before that official or any body of which the official is a member. The Ordinance also permanently prohibits certain paid lobbying activities of former County officials concerning specific matters in which the former official was personally and substantively involved. In addition, the Ordinance prohibits certain paid lobbying activities by a former elected County official or Chief Administrative Officer on any matter pending before any County agency, or by a former non-elected County official on any matter pending before his/her former agency, for a period of one year after separation from County service.

The Executive Officer of the Board of Supervisors is responsible for processing complaints and allegations of violations of the Postgovernment Ordinance, and initiating and overseeing the investigation and disposition of alleged violations of the Ordinance. The Executive Officer is also responsible for administrative enforcement of the Ordinance. Therefore, pursuant to the authority granted under the Postgovernment Ordinance, the Executive Officer working in collaboration with the County Counsel's office, has developed the attached Rules for Administration of the Ordinance for your Board's consideration.

Implementation of Strategic Plan Goals

The recommended action is consistent with the principles of the Countywide Strategic Plan Goal of Workforce Excellence by promoting precepts to instill integrity in the decision-making processes of County officers and employees, thereby strengthening their commitment to the organization.

FISCAL IMPACT/FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In 2005, the Legislature passed Senate Bill 8 ("SB 8"), which prohibits certain local government officials from acting as a paid agent or attorney for, or paid representative of, another person, under specified circumstances, for a period of one year after leaving office or employment. The legislation also provides that a local government agency may adopt a more restrictive ordinance or policy, if it so chooses. The provisions of SB 8 are codified in section 87406.3 of the Government Code, and are operative on July 1, 2006.

As it applies to the County of Los Angeles, SB 8 provides that, within the one-year period after leaving office or employment, a former County elected official or the Chief Administrative Officer is prohibited from making any appearance or communication with the County, or any officer or employee of the County, for compensation, that is made for the purpose of influencing (1) any administrative or legislative action, as defined; or (2) any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. These provisions do not apply to any appearance or communication which is made without compensation, or is made on behalf of another public agency by a former County official who is a board member, officer, employee or representative of the public agency.

In March 2006, your Board adopted the Postgovernment Ordinance which includes more stringent restrictions on postgovernment employment activities than what is prescribed in SB 8. The Postgovernment Ordinance is applicable to the members of your Board, the other elected County officials, the Chief Administrative Officer, and any County employee or member of a County board or commission who is required to file a statement of economic interests pursuant to the Political Reform Act ("designated employee").

The Postgovernment Ordinance includes the following key provisions:

- Designated County officials are prohibited from negotiating an agreement for future employment or the promise of income with persons or entities that have County matters pending before the official or any body of which the official is a member.
- Upon leaving county service, covered County officials are permanently prohibited from attempting to influence, for compensation, any County decision or action on a specific matter in which the former official was personally and substantively involved.
- For a period of one year after leaving service, former elected County officials and the Chief Administrative Officer are prohibited from engaging in direct communication, for compensation, with any County agency for the purposes of attempting to influence any action or decision on any matter pending before that County agency, which is made on behalf of a private person or entity. This one-year prohibition also applies to any designated County employee or board or commission member by prohibiting any direct communication, for compensation, with his/her former department, board or commission.

The provisions of the Postgovernment Ordinance do not apply to any former County official who is an elected or appointed officer of any city, county, district, multi-jurisdictional, state, or federal agency, and is representing that agency in his/her official capacity as an officer or employee of the agency. In addition, self-representation and uncompensated representation by a former County official of immediate family members in his or her individual capacity are not covered by the provisions of the Ordinance.

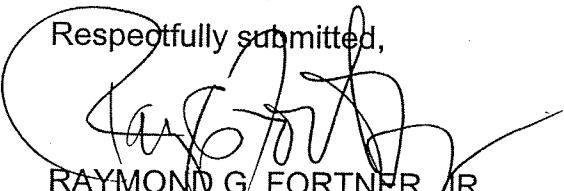
The Postgovernment Ordinance also provides for various enforcement procedures and remedies for violations of the Ordinance, including criminal fines up to \$1,000 and/or six months imprisonment, civil penalties up to \$5,000 for each failure to comply with the Ordinance, administrative fines of \$5,000 per violation of the Ordinance, and disciplinary action.


IMPACT ON CURRENT SERVICES

Working collaboratively, our offices have prepared the attached Rules to provide procedures for the administration of the Postgovernment Ordinance and guidance as to the application of the various provisions of the Ordinance. Specifically, the Rules contain definitions for key terms and phrases, and provide the procedural framework for processing and investigation of complaints and allegations of violations, and the determination of violations and appropriate enforcement procedures. Additionally, the Rules clarify that the Ordinance will operate prospectively, meaning that its provisions will not apply to individuals who left County employment prior to the effective date of the Ordinance.

Approval of the Rules by your Board will facilitate the implementation of the Postgovernment Ordinance by providing the Executive Officer with procedures and guidelines necessary for the enforcement of the Ordinance.

Respectfully submitted,


RAYMOND G. FORTNER, JR.
County Counsel


SACHI A. HAMAI
Executive Officer

RGF:SAH:NMT:lm

Attachment (1)

c: David E. Janssen
Chief Administrative Officer

**RULES FOR ADMINISTRATION OF CHAPTER 2.175 OF
THE LOS ANGELES COUNTY CODE PERTAINING TO POSTGOVERNMENT
EMPLOYMENT AND LOBBYING ACTIVITIES OF COUNTY OFFICIALS**

RULE 1 – AUTHORITY AND PURPOSE

1.01 Rules prescribed. In accordance with Chapter 2.175 of the Los Angeles County Code, the Los Angeles County Board of Supervisors does prescribe and approve these rules.

1.02 Purpose. These rules are prescribed for the purpose of the administration of the provisions of Chapter 2.175 of the Los Angeles County Code, relating to postgovernment employment and lobbying activities of county officials.

RULE 2 – DEFINITIONS

Unless otherwise specified or required by the context, words used in these rules have the following meanings. Words used in the masculine gender include the feminine and neuter.

2.01 “Appearance or communication” means appearing as a witness, attending a meeting, conversing in person or by telephone or other means, or corresponding in writing including, but not limited to, electronic mail.

2.02 “Attempt to influence” means to support, promote, oppose, or seek to modify or delay a county decision or action, including to provide or use persuasion, information, statistics, analyses or studies, and, for purposes of the permanent lobbying ban of Los Angeles County Code section 2.175.030(A), attempt to influence also means to assist another person in doing any of the foregoing. Attempt to influence, however, does not include the following instances in which a county official:

- A.** Represents himself or his immediate family, in their individual capacities, in connection with any matter pending before a county agency, and such representation is without compensation;
- B.** Acts as an elected or appointed officer of another government agency, solely in an official capacity;
- C.** Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research, and the subject matter of the conference or event does not pertain to a specific county decision or action;

- D. Attends a general informational meeting, seminar, or similar event;
- E. Requests information concerning any matter of public record; or
- F. Communicates with the press.

2.03 “Compensation” means the receipt of monetary or non-monetary payments such as salary, wages, fees, partnership or other similar interests or other payment or reimbursement, for services or time of the person.

2.04 “County agency” means any department, office, board, commission, or other agency of the County of Los Angeles. For purposes of the one-year lobbying restriction of Section 2.175.020 of the Los Angeles County Code, the county agency of a former employee of a member of the board of supervisors is deemed to be the former supervisorial district and the supervisor, any committee of which the supervisor is a member, or the board of supervisors if the supervisor is present.

2.05 “County decision or action” means a vote on a matter, appointment of a person, obligation or commitment of a county official’s agency to a course of action, entry into any contractual agreement on behalf of a county agency, or determination not to act on a matter, where the county agency or official is charged by law with making a final decision or taking final action on the matter. A county decision or action does not include a ministerial action.

2.06 “County official” means a member of the board of supervisors, the sheriff, the assessor, the district attorney, and any county employee or member of a county board or commission required to file a statement of economic interests pursuant to the Political Reform Act of 1974, as amended.

2.07 “Direct communication” means appearing as a witness before, conversing with (by telephone or other means or in person), corresponding with (including, but not limited to, electronic mail), or answering questions or inquiries from, any county official, either personally or through an agent who acts under one’s direct supervision, control, or direction.

2.08 “Enforcement officer” means the person who has been delegated with the power to enforce the provisions of Chapter 2.175 of the Los Angeles County Code.

2.09 “Executive officer” means the executive officer of the board of supervisors.

2.10 “Final decision or action” means a conclusive determination, disposition, or resolution of a matter by a county agency or official.

2.11 “Hearing officer” means the person appointed by the executive officer to conduct administrative hearings. The hearing officer shall not be the enforcement officer or his immediate supervisor.

2.12 “Matter” includes, but is not limited to, a county ordinance, motion or resolution of the board of supervisors, and a proceeding involving the granting, denial, modification, amendment, or revocation of a permit, entitlement, license, franchise, grant, or contract, or the sale or purchase of goods or property (real or personal).

2.13 “Ministerial action” means any action that is solely ministerial, manual, or clerical, i.e., an action that does not require a county agency or official to exercise discretion concerning any outcome or course of action.

2.14 “Negotiating” means interviewing or discussing an offer of employment with a prospective employer or his agent.

2.15 “Pending” means that no final decision or action on the matter has been taken by the county agency or official, or the matter has not otherwise concluded or been completed, or expired or been terminated pursuant to its terms or under applicable law.

2.16 “Person or entity” means any natural person, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

2.17 “Personally and substantively participating” means making or voting on a decision, or making a recommendation or rendering advice, including conducting research or an investigation, directly or indirectly, to a decisionmaker.

2.18 “Prospective employer” means a person or entity with whom a county official is negotiating, or has an arrangement concerning, future employment or the promise of income.

2.19 “Responsible person” means a person responsible for, or alleged to be responsible for, a violation of Chapter 2.175 of the Los Angeles County Code.

2.20 “Specific matter” means a particular matter including a decision, proceeding, claim, contract, legislation or other specific matter, which involves, or is under consideration by, a county agency. For purposes of enforcement of Los Angeles County Code section 2.175.030, a specific matter is one that is pending before a county agency; one to which the county is a party to; one in which the county has a direct or substantial interest; or any combination of the foregoing. In determining the

applicability of Los Angeles County Code section 2.175.030, the concept of “specific matter” is to be interpreted to refer to the particular contract, license, permit, entitlement, ordinance, policy, transaction or other matter and any actions related directly to that matter, such as amendment, extension, termination or enforcement, in which the former official participated. It is not to refer, for example, to future contract solicitations, subsequent applications for permits or other entitlements, or future policies related to the same subject. It is also not to be interpreted to necessarily preclude representation by the former official on behalf of individuals or entities which may be governed by a policy or ordinance in which the official participated. Further, it is to be interpreted to distinguish between, and allow for, a former official’s application of his “expertise” on a subject to advocate for or advise clients on an issue, versus his involvement in a specific policy decision that involved deliberation, decision or action focused upon the interest of specific persons or discrete and identifiable class of persons.

2.21 “Violator” means a person found to be in violation of Chapter 2.175 of the Los Angeles County Code.

RULE 3 – ADMINISTRATION

3.01 Executive officer. The executive officer shall have the following duties:

- A.** The executive officer, in conjunction with the auditor-controller, shall investigate any complaints of violations or allegations of actual or potential violations of Chapter 2.175 of the Los Angeles County Code.
- B.** The executive officer is the enforcement officer for determination and imposition of any administrative fines to be issued for any violation of Chapter 2.175 of the Los Angeles County Code.
- C.** The executive officer will provide representation, directly or in conjunction with other county departments, on behalf of the county before the administrative hearing officer.
- D.** The executive officer shall prepare procedures and protocols for the enforcement of the provisions of Chapter 2.175 of the Los Angeles County Code.
- E.** The executive officer may propose amendments or other modifications to these rules, which shall be presented to the board of supervisors for its consideration and approval.

- F. The executive officer may develop any forms, guidelines, or other informational materials necessary or convenient for implementation of the provisions of Chapter 2.175 of the Los Angeles County Code.

3.02 Designation of other persons to act. The executive officer may designate one or more assistants, deputies or other persons in the department to act for the executive officer.

3.03 Requests for advice. The executive officer may refer requests for advice to the county counsel for appropriate review and response.

RULE 4 – REVIEW AND DETERMINATION BY EXECUTIVE OFFICER

4.01 Review and investigation. The executive officer, in conjunction with the auditor-controller, shall timely process, review, investigate complaints of violations or allegations of any actual or potential violation(s) of Chapter 2.175 of the Los Angeles County Code, and when appropriate, issue a notice of violation, notice of administrative fine, and/or notice of noncompliance, as provided for in Chapter 1.25 of the Los Angeles County Code and the operational procedures developed by the executive officer.

4.02. Relevant factors. In determining whether to issue a notice of violation and/or notice of administrative fine, the executive officer shall consider all relevant circumstances including, but not limited to, the following:

- A. The nature and extent, number, or frequency of violation(s);
- B. The presence or absence of any intention on the part of the violator to conceal, deceive or mislead;
- C. Whether the violation was deliberate, negligent or inadvertent;
- D. Whether the violator sought and relied on advice from an attorney, or a county agency or official such as the county counsel;
- E. Whether the violation was an isolated incident or part of a series or pattern of violations;
- F. Whether the violator has any prior history of violations of county ordinances or rules, or other laws;

- G.** Whether another public entity has determined that the violator engaged in prohibited conduct similar to that specified in Chapter 2.175 of the Los Angeles County Code;
- H.** The degree to which the violator cooperated fully during the investigation by the executive officer or auditor-controller, including, but not limited to, disclosure of all pertinent information known to the violator;
- I.** The degree to which the violator cooperated with the executive officer to remedy a violation; or
- J.** Other factors that are appropriate to the circumstances of the particular case.

4.03 Decision final unless hearing requested. Unless a responsible person makes a timely request for an administrative hearing to contest the imposition of the administrative fine and/or noncompliance fee, the notice of administrative fine or notice of noncompliance fee shall constitute the final administrative order of the county.

4.04 Other enforcement actions not precluded. Issuance of a notice of administrative fine or notice of noncompliance fee, or both, and/or payment thereof, does not preclude the executive officer from taking any other enforcement action in response to a code violation or from making referrals to the district attorney for the filing of a criminal complaint or to the county counsel for the filing of a civil enforcement action.

4.05 Limitations period. The executive officer may not initiate enforcement proceedings pertaining to a violation of any provision of Chapter 2.175 of the Los Angeles County Code, nor may any civil or administrative action alleging a violation of such provision be filed, if four years or more have passed since the date of the violation.

RULE 5 – ADMINISTRATIVE HEARING

5.01 Request. Any responsible person served with a notice of administrative fine and/or notice of noncompliance fee may request an administrative hearing before a hearing officer to contest the imposition and/or the amount of the administrative fine and/or the noncompliance fee, as provided for in Chapter 1.25 of the Los Angeles County Code and the operational procedures developed by the executive officer.

5.02 Hearing. Upon receiving a timely request in proper form, the executive officer shall schedule an administrative hearing before a hearing officer and provide notice thereof to the responsible person(s), and a hearing shall be conducted by the

hearing officer, in accordance with Chapter 1.25 of the Los Angeles County Code and the operational procedures developed by the executive officer. Failure of the responsible person(s) to appear at the administrative hearing shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies to judicially challenge the imposition of the administrative fine and/or the imposition of the noncompliance fee.

5.03 Decision. After conclusion of the hearing, the hearing officer shall issue a written decision to confirm or cancel the administrative fine and/or noncompliance fee, or to reduce the amount of the administrative fine and/or noncompliance fee. The decision shall include a statement of the reasons for the decision, which shall be consistent with the applicable provisions of Chapter 2.175 of the Los Angeles County Code and these rules. The decision shall also inform the responsible person(s) of the availability of judicial review of the decision. The hearing officer's written decision shall constitute the final administrative decision of the county.

RULE 6 – APPLICABILITY

6.01 Applicability. The provisions of Chapter 2.175 of the Los Angeles Code shall not apply to any county officer who terminated his county employment prior to the effective date of the ordinance. However, any person returning to county employment on or after the effective date shall be subject to the aforesaid provisions.